

REMARKS

As noted previously, the Applicants appreciate the Examiner's thorough examination of the subject application.

Claims 1-34 are pending in the application and were rejected in the non-final Office Action mailed 07 April 2008 on various statutory grounds, described in further detail below. Claims 1, 11, 14, 15, 25, 30, 33, and 34 are amended herein. No new matter has been added.

Applicants request reconsideration and further examination of the subject application in light of the foregoing amendments and the following remarks.

Claim Rejections – 35 U.S.C. § 112

In the Office Action, claims 33 and 34 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. More specifically, the Examiner stated that claim 33 was unclear for reciting the phrase “said computer program comprising . . .” The Examiner noted that the phrase was unclear because a computer program is recorded on a computer-readable medium, but the medium does not include the modules as claimed in claim 33. The Examiner stated further that regarding claim 33, it was unclear whether the phrase “configured for storage in a memory” is sufficient to meet the requirements of 35 U.S.C. § 101. Claim 34 was stated as inheriting the indefiniteness of claim 33.

As noted above, claim 33 has been amended to include “A computer program product including computer-readable instructions resident in a computer-readable medium the computer-readable instructions comprising”. Claim 34 has been amended to refer to the “computer program product” of claim 34. It is submitted that the amendments to claim 33 and 34 overcome the rejections of claims 33 and 34 under 35 U.S.C. § 112 and also that the amendments render claims 33 and 34 compliant with 35 U.S.C. § 101.

Claim Rejections – 35 U.S.C. § 102

In the Office Action, claims 1-4, 6-11, 13-18, 21-27, 29, 30, 32, and 33 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. U.S. Patent No. 7,267,799 to Borich et al. (“Borich”). Applicant respectfully traverses the rejection and requests reconsideration for the following reasons.

One requirement for a rejection under 35 U.S.C. § 102(e) is that the cited reference teach each and every limitation as arranged in the claim(s) at issue. In this situation, Borich fails to teach the limitations as recited in the independent claims of the application, i.e., amended claims 1, 11, 14, 15, 25, 30, and 33, and therefore the rejection is improper.

More specifically, claims 1, 11, 14, 15, 25, 30, and 33 have been amended to each include a limitation corresponding to “to count said test pad reflectance values to determine a test pad count and determining a test strip format as a function of said test pad count.” Borich is not understood as teaching or suggesting such a limitation.

Because of the foregoing reasons, Borich is an improper basis for a rejection of claims 1-4, 6-11, 13-18, 21-27, 29, 30, 32, and 33 under 35 U.S.C. § 102(e), and the rejection of the claims should be removed accordingly.

Claim Rejections – 35 U.S.C. § 103

In the Office Action, claims 5, 12, 19, 28, 31, and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Borich, previously cited. Applicant, noting that claim 5 has been cancelled, respectfully traverses the rejection and requests reconsideration as each of these claims depends from an independent claim that is patentable over Borich for the reasons stated above. Thus, Borich forms an improper basis for a rejection of claims 5, 12, 19, 28, 31, and 34 under 35 U.S.C. § 103(a), and the rejection should be withdrawn accordingly.

Conclusion

In view of the amendments and remarks submitted herein, Applicants respectfully submit that all of the pending claims in the subject application are in condition for allowance, and respectfully request a Notice of Allowance for the application.

If a telephone conference will expedite prosecution of the application, the Examiner is invited to telephone the undersigned.

Authorization is hereby given to charge our deposit account, No. 50-1133, for any fees required for the prosecution of the subject application.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

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/G. Matthew McCloskey/
G. Matthew McCloskey, Reg. No. 47,025
Attorneys for Applicants
28 State Street
Boston, MA 02109-1775
Telephone: (617) 535-4082
Facsimile: (617)535-3800